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Flintshire County Council v (1) Mr Kilshaw (2) Mrs Kilshaw (3) Guardian ad Litem (4) Official Solicitor (5) Mr A Wecker (6) Mrs T Wecker sub nom Flintshire County Council v K (2001)

(2001) 2 FLR 476

09/04/2001

Barristers
Private: Marcus Scott-Manderson QC

Court
Family Division

Summary
Care orders were made in respect of twins adopted from America in an international adoption that was so ill-conceived, ill thought out and poorly implemented that significant harm was inevitable, and a care plan was approved returning the twins to America.

Facts
Three applications concerning a set of twin girls as follows: (i) an application by the local authority ('F') in care proceedings under s.31 Children Act 1989; (ii) an application by the twins' natural parents ('Mr and Mrs W') for the court to exercise its inherent jurisdiction to order the return of the twins to the United States of America without engaging in a welfare inquiry; and (iii) an application by the first and second respondents ('Mr and Mrs K') for permission to apply for residence orders. Mr and Mrs W were resident in the USA, living in the state of Missouri. Having decided to place the twins for adoption before they were born, Mrs W contacted a private adoption agency in the USA. Mr and Mrs K were UK citizens who wanted more children and had decided on an overseas adoption. Mr and Mrs K commissioned an independent social worker and counsellor ('C') to write a home study report then contacted a private adoption organisation in the USA that they had found on the internet and which was run by the same person ('TJ') who ran the agency working with Mr and Mrs W. Mrs W chose a couple in California to be the twins' adoptive parents from a shortlist supplied by TJ and, on 14 October 2000, Mrs W signed an adoption agreement which she was at liberty to revoke within 90 days. Accordingly, Mrs W took the twins to California then, on 29 November and aided by TJ, Mrs W took the twins away from the Californian couple. TJ telephoned Mr and Mrs K in mid-November 2000 to offer them the twins for adoption. Mr and Mrs K travelled to the USA to meet the twins and took them out for the day on 2 December 2000, keeping them overnight with a view to returning them to Mrs W in the morning. The Californian couple turned up on 3rd December seeking the return of the twins and, after difficult scenes, Mr and Mrs K left with Mrs W and the twins. Mr and Mrs K knew that they had to adopt the twins in Mrs W's state of residence, which they

mistakenly believed to be Arkansas so met an attorney specialising in Arkansas adoption law the following day with Mrs W. Mrs W signed a sworn statement, consenting voluntarily and unconditionally to the twins' adoption by Mr and Mrs K and Mr W signed an identical form of consent notarised in St Louis. On 19 December 2000 a petition for adoption was filed at the probate court in Arkansas. The petition contained no reference to the residence of Mrs W or the twins and gave the residence of Mr and Mrs K as their address in the UK. An interlocutory decree of adoption was made on 22 December 2000. Mr and Mrs K then travelled to Chicago and, after obtaining passports for the twins, they left the USA with the twins on 28 December 2000. On 15 January 2001 Mr and Mrs K gave their story to the Sun newspaper and intense media interest followed. Social services set about making enquiries and began care proceedings. On 18 January 2001 emergency protection orders were made and the twins were moved to emergency foster carers. On 22 January 2001 a judge in the Missouri Circuit Court made an interim custody order in favour of Mr W, and the Arkansas Department of Human Services, Mr and Mrs W and the Californian couple filed motions in the Arkansas court. On 6 March 2001, in a decision from which Mr and Mrs K were appealing, the Court of Pulaski County in Arkansas held that the adoption was defective because the jurisdictional requirements of residence had not been met. The judge accordingly cancelled the interlocutory decree of adoption and dismissed the motions filed in his court.

Held

HELD: (1) This court was satisfied that F had been right to make an application for emergency protection orders. (2) Before making an order to return the twins to the USA, this court had to consider: (i) to which state the twins should be sent; (ii) who would look after them; (iii) which state courts might receive claims in respect of the twins; (iv) which court would decide the future of the twins; and (v) how long it would all take. Foreign law was not a matter for this court save to the extent of any findings of fact on what the law was. (3) This court had been able, through the Official Solicitor, to inform the US authorities of the progress and conduct of this case and, in turn, the US authorities had kept this court fully informed. (4) The order of the Arkansas court on 6 March 2001 meant that Mr and Mrs K did not have parental rights in respect of the twins in the USA. However, it was far from clear that parental rights had been restored to Mr and Mrs W. (5) Mr and Mrs K had not followed the procedure set out in the Department of Health's "Guide to Inter-Country Adoption and Procedure". They had not sought a home study report by social services but had commissioned a report privately. There were no references to C's qualifications in the report they did obtain nor to why C was a proper person to report to the court on such an important matter. C's report was full of platitudes, and was superficial and shallow. It scarcely addressed the suitability of Mr and Mrs K to parent a black child and said nothing about their suitability to manage twins. The report was dangerously misleading. A two-tier system that applied lower standards to the adoption of a child from overseas was unacceptable. (6) Given the changes and turmoil in the twins' lives, it was inevitable that they had suffered significant harm. They had had no consistency of place, surroundings or environment and arrangements for them had been ill- conceived, ill-thought out, and poorly implemented. This court was satisfied that on 18 January 2001 the twins were suffering significant harm, which was accumulating and continuing. Therefore, the threshold criteria had been met and this court had jurisdiction to make care orders. However, this court also had to consider the likelihood of future harm as if Mr and Mrs K's appeal in Arkansas was successful and the interlocutory decree of adoption was reinstated, Mr and Mrs K would have parental rights in the USA and the decree would become an overseas adoption within the meaning of the Adoption Act 1976. On the evidence and given the conduct of Mr and Mrs K, there was likely to be future harm caused to the twins in terms of their intellectual, emotional, social and behavioural development. (7) Mr and Mrs K's suggestion that the twins' removal was driven by any local or central government agenda was rejected. (8) It would not be in the welfare interests of the twins to grant Mr and Mrs K's applications for residence orders. Further, if this court made a residence order in favour of Mr and Mrs K, it would do so without any consideration of Mr and Mrs W's claims or of the twins' wider birth family. Such assessments lay within the expertise of

professionals familiar with all the circumstances of St Louis and, more particularly, with the court in Missouri. A residence order in favour of Mr and Mrs W would avoid an intermediate move and would avoid delay. However, this court did not have the material necessary to decide whether that course would be right for the twins. (9) The welfare of the twins plainly required care orders to be made. The care plan was that the twins should return to St Louis, Missouri, and the appropriate court there had made an order granting protective custody and control of the twins to the Division of Family Services pending the resolution of matters before the court. By the same order, the twins' placement with Mr or Mrs W was prohibited. (10) This court was satisfied that it was in the best interests of the twins to live outside England and Wales and the care plan was approved. (11) It was appropriate to dismiss Mr and Mrs W's applications for orders under this court's inherent jurisdiction. (12) Ordinarily, a court would provide that on the departure of children from the jurisdiction, all orders made should stand discharged. However, F was directed to apply for discharge of the care orders when its obligations and potential obligations under the orders had been fulfilled. The Missouri court was agreeable to a direction in those terms.